

July 25, 2013

GLORIA L. FRANKLIN, CLERK  
U.S. BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA

Heinz Binder (SBN 87908)  
Robert G. Harris (SBN 124678)  
Wendy W. Smith (SBN 133887)  
Roya Shakoori (SBN 236383)  
BINDER & MALTER, LLP  
2775 Park Avenue  
Santa Clara, CA 95050  
Tel: (408) 295-1700  
Fax: (408) 295-1531

Email: Heinz@bindermalter.com  
Email: Rob@bindermalter.com  
Email: Wendy@bindermalter.com  
Email: Roya@bindermalter.com

Proposed Attorneys for Debtor and Debtor-in-Possession  
MI PUEBLO SAN JOSE, INC.

The following constitutes the  
Order of the Court, Signed

7/24 2013

HON. ARTHUR S. WEISSBRODT  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

In re:

MI PUEBLO SAN JOSE, INC.,

Debtor.

Case No. 13-53893-ASW

Chapter 11

Date: July 24, 2013

Time: 3:00 p.m.

Place: Courtroom

280 South First Street  
San Jose, California

**ORDER (I) GRANTING ADMINISTRATIVE EXPENSE STATUS TO DEBTOR'S  
UNDISPUTED OBLIGATIONS TO VENDORS ARISING FROM POST-PETITION  
DELIVERY OF GOODS ORDERED PRE-PETITION AND AUTHORIZING DEBTOR  
TO PAY SUCH OBLIGATIONS IN THE ORDINARY COURSE OF BUSINESS; (II)  
AUTHORIZING PAYMENT FOR GOODS RECEIVED WITHIN TWENTY DAYS OF  
FILING AND ESTABLISHING ADMINISTRATIVE CLAIMS BAR DATE FOR SECTION  
503(B)(9) CLAIMS; AND (III) ESTABLISHING PROCEDURES AND TO ALLOW**

1  
2 **CLAIMS OF PERISHABLE AGRICULTURAL COMMODITIES ACT AND PACKERS**  
3 **AND STOCKYARD ACT CLAIMANTS**

4 The Motion for Order (i) Granting Administrative Expense Status to Debtor's  
5 Undisputed Obligations to Vendors Arising from Post-petition Delivery of Goods  
6 Ordered Pre-petition and Authorizing Debtor to Pay Such Obligations in the Ordinary  
7 Course of Business; (ii) Authorizing Payment for Goods Received Within Twenty Days  
8 of Filing and Establishing Administrative Claims Bar Date for Section 503(b)(9) Claims;  
9 and (iii) Establishing Procedures and to Allow Claims of Perishable Agricultural  
10 Commodities Act and Packers and Stockyard Act Claimants (the "Motion") came on for  
11 hearing on July 24, 2013. Robert G. Harris, Esq. and Wendy W. Smith of Binder &  
12 Malter, LLP appeared for debtor and debtor-in-possession Mi Pueblo San Jose, Inc.  
13 ("Mi Pueblo"). Robert B. Kaplan, Esq. of Jeffer, Mangels, Butler & Mitchell, LLP  
14 appeared for Wells Fargo Bank, National Association ("WFB"). Other appearances  
15 were noted on the record.

16 The Court has considered the Motion, supporting pleadings, and the argument of  
17 counsel. There having been no objection, and good cause appearing therefor IT IS  
18 THEREFORE ORDERED that

- 19 1. August 31, 2013 is established as the bar date for filing claims under  
20 Bankruptcy Code Section 503(b)(9). Mi Pueblo shall file and serve on all  
21 creditors not later than August 1, 2013, notice of said bar date. Any holder of  
22 such a claim who fails to file his, her, or its claim under Section 503(b)(9) by  
23 August 31, 2013, shall be forever barred from doing so. Untimely claims will  
24 not be entitled to administrative priority and will be treated as general  
25 unsecured claims in the case to the extent that they are allowed.  
26

2. Mi Pueblo is authorized but not required to pay, to the extent necessary in its sole business discretion for goods received within 20 days before the date of the commencement of the case, subject to the requirements of paragraph 6 of this Order.
3. The procedures to identify and resolve 503(b)(9) Claims set forth at paragraph 14 of the Motion are approved.
4. Mi Pueblo is authorized but not required to pay, to the extent necessary in its sole business discretion for goods whose proceeds are subject to statutory trusts under either (a) the Perishable Agricultural Commodities Act ("PACA") claimants or (b) the Packers and Stockyards Act ("PSA"), subject to the requirements of paragraph 6 of this Order.
5. The PACA Procedures and PSA Procedures described at paragraphs 24 and 25 of the Motion are approved.
6. Prior to payment of any claim under Bankruptcy Code section 503(b)(9), PACA or PSA pursuant to this Order, Mi Pueblo shall deliver to WFB and its counsel Robert B. Kaplan, Esq. and Nicolas De Lancie, Esq. via electronic mail the invoices, proof of delivery, summary of the foregoing, dates of delivery and any other documents Mi Pueblo deems appropriate (each a "Claim Package"). WFB shall have three business days after the date of its receipt of each Claim Package to review the documentation supplied. If WFB does not object to payment of the claim that is the subject of the Claim Package within the specified time period by delivering its objection to the Claim Package by electronic mail to Mi Pueblo's counsel Robert G. Harris,

1 Esq. or Wendy Smith, Esq., Mi Pueblo may pay that claim. If WFB does  
2 object to payment of the claim, and the parties are unable to resolve the  
3 objection through negotiation, then Mi Pueblo shall set a hearing on not less  
4 than 20 calendar days' notice on WFB's objection, WFB shall file and serve its  
5 objection and any supporting authorities and evidence (the "WFB Brief") on  
6 Mi Pueblo and the claimant within 5 calendar days of the date of its objection.  
7 Mi Pueblo and the claimant shall file and serve any response to said objection  
8 not later than 5 calendar days' after service of the WFB Brief.  
9

- 10 7. The suppliers of pre-petition outstanding orders (the "Outstanding Orders") of  
11 perishable goods delivered after the Petition Date of July 22, 2013 are  
12 granted an administrative expense priority under section 503(b) of the  
13 Bankruptcy Code, for all undisputed obligations of Mi Pueblo arising from the  
14 acceptance of goods subject to Outstanding Orders and (b) Mi Pueblo is  
15 authorized to satisfy such obligations in the ordinary course of business.  
16

17 APPROVED AS TO FORM:

18 JEFFER, MANGELS, BUTLER & MITCHELL, LLP  
19

20 By: /s/ Robert B. Kaplan  
21 Robert B. Kaplan

22 Attorneys for Wells Fargo Bank, N.A.

23 \*\*\*\*\* END OF ORDER \*\*\*\*\*  
24  
25  
26  
27